



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

DEC 15 2005

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Joseph Sandler, Esq.  
Sandler & Reiff  
50 E Street, SE, Suite 300  
Washington, DC 20003

RE: MUR 5625  
Aristotle International, Inc.

Dear Mr. Sandler:

On December 14, 2004, and December 27, 2004, the Federal Election Commission notified Aristotle International, Inc. ("Aristotle") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to Aristotle at those times.

Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on December 8, 2005, found that there is reason to believe Aristotle knowingly and willfully violated 2 U.S.C. § 438(a)(4), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Alexandra Dumas or Christine Gallagher, the attorneys assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas  
Chairman

Enclosures  
Factual and Legal Analysis  
Procedures

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**Respondent: Aristotle International Inc.**

**MUR: 5625**

**I. INTRODUCTION**

In this matter, National Geographic and Political Software ("NGP") alleges that Aristotle International, Inc. ("Aristotle") downloaded data from the Federal Election Commission website and incorporated the data into an upgrade of its Campaign Manager 5 ("CM5") software product. NGP asserts that Aristotle's action contravenes the Federal Election Campaign Act of 1971, as amended ("the Act"), as articulated by the Commission in Advisory Opinion ("AO") 2004-24. For the reasons set forth below, the Commission finds reason to believe that Aristotle International, Inc. knowingly and willfully violated of 2 U.S.C. § 438(a)(4) by using FEC data for a commercial purpose.

**II. FACTS**

On June 10, 2004, NGP requested an AO regarding a proposed upgrade to its "flagship" software product, NGP Campaign Office. NGP proposed to "offer our clients the ability to automatically see the contributions that their donors have made to other candidates, PACs and party organizations." This feature would allow campaigns to ask their donors for the maximum amount of money that the donor has given to other campaigns in the past.

On August 5, 2004, the Commission released draft language for AO 2004-24 concluding that NGP's proposed use of FEC data would violate 2 U.S.C. § 438(a)(4). In a comment submitted regarding the draft AO, Aristotle argued that, while NGP's blanket request to use FEC data should be denied, the Advisory Opinion should note that the legality of using such data should be based on factual and contextual considerations. Aristotle argued that it is possible "to

1 structure limited access to certain elements of the data in a way that balances the competing  
2 interests" of disclosure and the protection of privacy.

3 In the final language of AO 2004-24, the Commission denied NGP's request to use FEC  
4 data in an upgrade to its software. Specifically, the AO stated that "[y]our proposed sale or  
5 inclusion of information about contributors (other than information about political committees  
6 that are contributors) obtained from the FEC's public records in NGP Campaign Office would be  
7 prohibited under the Act's restriction on the sale or use of such contributor information."

8 Several months after the AO was issued, the Commission received a complaint from  
9 NGP claiming that Aristotle had developed software that ran afoul of the Act as interpreted in  
10 AO 2004-24. As part of its complaint, NGP included four exhibits that were taken from  
11 Aristotle's marketing materials. The first exhibit comes from an Aristotle Power Point  
12 presentation which contains the following quote: "When soliciting a contribution, Campaign  
13 Manager 5 will tell you exactly how much the prospect has given to others, which suggests how  
14 much you should ask for." NGP argues that this exhibit demonstrates that CM5 violates the Act  
15 "as spelled out in AO 2004-24." NGP also points out that another marketing document created  
16 by Aristotle references AO 2004-24, "demonstrating that they [Aristotle] are aware of the  
17 prohibition on the sale or use of individual contributor data ... but have chosen to ignore it."

18 In response to the complaint, Aristotle argues that NGP is incorrect to claim that  
19 "Aristotle was doing what the FEC had prevented NGP from doing." Aristotle emphasizes the  
20 fact that its software does not allow a customer to view records for any individuals not already in  
21 the customer's database and that donor contact information is not derived from FEC data.

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1 Aristotle asserts that the purpose of its software upgrade is to help Aristotle's customers comply  
2 with Commission regulations and also argues that the Act allows broad use of FEC data.

3 Aristotle argues that CM5 utilizes contributor data so that campaigns can ensure that the  
4 contributions they accept comply with all election laws and regulations. Aristotle suggests that  
5 customers check "aggregate contributions to insure that limits are not exceeded." Aristotle also  
6 suggests that campaigns may want to see to whom their potential donors have given, in order to  
7 exclude donors who gave to candidates with whom the campaigns do not agree. Aristotle  
8 contends that the materials in the complaint suggesting that customers use CM5 for solicitation  
9 purposes refer to state data not covered by the Act, but that "[o]ut of an abundance of caution"  
10 Aristotle has modified the language "to clarify that reference to FEC data is expressly for the  
11 campaign 'to easily conform [its] fundraising to state and federal compliance standards.'"

12 Aristotle also argues that its use of FEC data falls within the acceptable range of uses as  
13 articulated by the Commission and court precedent. Aristotle attempts to distinguish its use of  
14 Commission data from NGP's purported intended use addressed in AO 2004-24, by focusing on  
15 language that was changed in the final draft. The draft AO contained the following sentence:  
16 "Such use is for a commercial purpose because NGP is a for-profit company that sells and  
17 services NGP Campaign Office for a profit." In the final version of the AO, the sentence is  
18 truncated to read simply: "Such use is for a commercial purpose." Aristotle asserts that "[t]he  
19 removal of such language was significant, for it underscored the FEC's commitment to a context-  
20 based analysis in each case involving publication or use of individual contributor data."

**III. LEGAL ANALYSIS**

The Act requires the Commission to make disclosure reports available to the public within 48 hours of the Commission's receipt of such reports; however, "any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes...." 2 U.S.C. § 438(a)(4). Title 11 of the Code of Federal Regulations prohibits use of data from reports "for any commercial purpose." 11 C.F.R. § 104.15(a). The regulations articulate an exception for the use of FEC data in "newspapers, magazines, books or other similar communications ... as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes." 11 C.F.R. § 104.15(c).

In evaluating NGP's request for an Advisory Opinion, the Commission found those circumstances constituted a prohibited commercial use. AO 2004-24 at 3. When drafting that Advisory Opinion, the Commission reviewed the reasoning in the most recent case on point. *See Federal Election Comm'n v. Legi-Tech, Inc.*, 967 F. Supp. 523 (D.D.C. 1997). In *Legi-Tech*, the United States District Court for the District of Columbia granted the Commission's motion for summary judgment, finding that the sale of subscriptions to Legi-Tech's Campaign Contribution Tracking System ("CCTS") violated the commercial use provision of section 438(a)(4). Legi-Tech sold to subscribers lists of donors compiled from FEC data so that subscribers could solicit those donors. The court specifically found Legi-Tech in violation of the commercial purposes

1 clause of the Act. *Id.* at 528; *see contra Federal Election Comm'n v. Political Contributions*  
2 *Data, Inc.*, 943 F.2d 190 (2d Cir. 1991).<sup>1</sup>

3 Aristotle's use of contributor data appears to constitute a commercial use as articulated by  
4 the Commission in AO 2004-24. Aristotle is conducting activity that is identical to that  
5 addressed in AO 2004-24: collecting contributor information from the Commission's public  
6 records and including it as part of a software upgrade. The AO labels the use of contributor  
7 information described by NGP's request as prohibited based on its commercial purpose. Thus,  
8 even if Aristotle intended its clients to use the contributor information solely for compliance  
9 purposes, Aristotle itself would have used the data for commercial purposes, *i.e.* to sell its  
10 software.

11 The change in language between the draft version of AO 2004-24 and the final version  
12 does not support Aristotle's interpretation of the Act. While Aristotle was correct to note that the  
13 change removed the reasoning that the violation was based on NGP's status as a for-profit  
14 company, the Commission's final language found that an entity, for-profit or otherwise, that sold  
15 FEC data in a software upgrade or as a separate service would be in violation of the Act.  
16 Therefore, based on AO 2004-24, the Commission has already determined that commercial sale  
17 of a software upgrade that includes FEC data constitutes a commercial use of FEC data.  
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<sup>1</sup> In *Political Contributions Data, Inc.*, 943 F.2d 190, the Second Circuit found Political Contributions Data's ("PCD") use of FEC data permissible. PCD collected and sorted FEC data by congressional district and employer and sold the lists. The court noted that the lists did not contain contributors' addresses or phone numbers, and that the lists did contain disclaimers warning against unauthorized use of such data. Aristotle cites this case for the proposition that a for-profit or commercial entity can, under certain circumstances, sell data collected from the Commission. PCD represents the least restrictive interpretation of section 438(a)(4) and was criticized by the D.C. District Court in *Legi-Tech*.

1 The phrase knowing and willful indicates that "actions [were] taken with full knowledge  
2 of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 2778  
3 (daily ed. May 3, 1976); *see also Federal Election Comm'n v. John A. Dramei for Cong.*  
4 *Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing  
5 and willful"). A knowing and willful violation may be established "by proof that the defendant  
6 acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*,  
7 916 F.2d 207, 214 (5<sup>th</sup> Cir. 1990). The court also found that the evidence did not have to show  
8 that a defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a  
9 defendant's state of mind," if there were "facts and circumstances from which the jury reasonably  
10 could infer that [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213  
11 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5<sup>th</sup> Cir.), *cert. denied*, 439 U.S. 838  
12 (1989)). Here, Aristotle was aware of the Commission's conclusion in AO 2004-24, as  
13 evidenced by its use of the final Advisory Opinion in its marketing materials, yet Aristotle  
14 continued to use FEC data its software upgrade and used its software upgrade for commercial  
15 purposes.

16 Therefore, based on the foregoing, there is reason to believe that Aristotle International,  
17 Inc. knowingly and willfully violated 2 U.S.C. § 438(a)(4).